

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julia Pagnamenta	Team: Squad #2	CCRB Case #: 202004682	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 06/28/2020 4:20 PM	Location of Incident: Washington Square North between West 5th Avenue and Washington Square West	Precinct: 06	18 Mo. SOL 12/28/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/29/2020 10:29 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 06/29/2020 10:29 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jonathan Dones	27390	948203	006 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Contant	09703	960391	006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jonathan Dones	Force: Police Officer Jonathan Dones used physical force against § 87(2)(b)	
B.POM Jonathan Dones	Force: Police Officer Jonathan Dones used physical force against individuals.	
C.POM Jonathan Dones	Force: Police Officer Jonathan Dones used physical force against an individual.	

Case Summary

On June 29th, 2020, § 87(2)(b) filed the following complaint via the Civilian Complaint Review Board's website.

At approximately 4:20 p.m. on June 28th, 2020, § 87(2)(b) was at the Queer Liberation March and stood near a marked NYPD van stopped eastbound on Washington Square North between Fifth Avenue and Washington Square West in Manhattan with three friends, § 87(2)(b) and § 87(2)(b). Police Officer Jonathan Dones and Police Officer Matthew Contant of the 6th Precinct received a call to assist other officers at Washington Square Park. Once they arrived, Police Officer Dones and Police Officer Contant responded to the location of the police van on Washington Square North and Fifth Avenue after being told by other police officers that there were injured officers inside. Police Officer Dones, Police Officer Contant, and other officers were standing between the van and the large group of protesters surrounding it when Police Officer Dones pushed § 87(2)(b) and other protesters in their immediate vicinity (**Allegations A and B: Physical Force: § 87(2)(g)**). The protesters surrounding the police van then sat and knelt down on Washington Square North, and Police Officer Dones lifted an unidentified individual who was sitting or kneeling on the ground and pulled them approximately a few feet to the west (**Allegation C: Physical Force: § 87(2)(g)**). § 87(2)(b) was not arrested or issued any summonses.

Body-worn camera (BWC) footage from Police Officer Dones and Police Officer Contant's BWCs were obtained for this incident and are attached in IAs #20 and #35 (**Board Reviews 01 and 02**) and summarized in IA #21 and IA#36 (**Board Review 03 and 04**). Additional body-worn camera footage was obtained for this case from Police Officer Stephen Cambria, Police Officer Robert Janison, Lieutenant Erik Tarnok, Police Officer Nora Reade, Police Officer Grace Roserotapia, Police Officer Kerry McCarty, Police Officer Justin Cristiano, Police Officer David James, Police Officer Yousef Demes, Police Officer Patrick Defonzo, Lieutenant Paul Jurgens, Lieutenant Gary Giersbach, and Sergeant Daniel Houlahan, all of them from the 6th Precinct, and is attached in IA#59 (**Board Review 05**) and summarized in IA#60 (**Board Review 06**).

Findings and Recommendations

Allegation (A): Physical Force: Police Officer Jonathan Dones used physical force against

§ 87(2)(b)

Allegation (B): Physical Force: Police Officer Jonathan Dones used physical force against individuals.

Allegation (C): Physical Force: Police Officer Jonathan Dones used physical force against

§ 87(2)(b)

§ 87(2)(b) was interviewed over the phone on July 13th, 2020 (**Board Review 07**). Witness statements were obtained over the phone from § 87(2)(b) on July 16th, 2020 (**Board Review 08**), § 87(2)(b) on July 20th, 2020 (**Board Review 09**), and § 87(2)(b) on July 28th, 2020 (**Board Review 10**). Police Officer Jonathan Dones and Police Officer Matthew Contant were interviewed on September 9th, 2020 (**Board Review 11 and 12**). The CCRB was unable to identify or obtain a statement from the victims of **Allegation B** and **Allegation C**.

The following facts are undisputed: While on patrol, Police Officer Dones and Police Officer Contant received a 10-13 radio call requesting assistance for other officers at a protest occurring in the vicinity of Washington Square North between Fifth Avenue and Washington Square West. When they responded to this location, a police van with a prisoner inside was being prevented from leaving the location by protesters (Police van #8748 from the 6th Precinct). After police van #8748

was able to leave the location, they responded to a second marked police van in the vicinity (Police van #8791 from the 75th Precinct), in which they believed there was an injured officer, and which protesters were also preventing from leaving the location. Police van #8791 was in the middle of the street on Washington Square North, between Fifth Avenue and Washington Square West. Police Officer Dones and Police Officer Contant stood in front of police van #8791 facing a large group of protesters, with the closest protesters standing within an arm's length. Police Officer Dones extended his arms forward and pushed the protesters standing directly in front of him. Amongst these protesters was § 87(2)(b) whom Police Officer Dones pushed in their mid-torso area with his gloved hand. At this point the entire group of protesters in front of the police van knelt and sat down in front of the van. Police Officer Dones then grabbed an unidentified individual who appeared to be kneeling or sitting down in front of him and lifted them from under their armpits, pulling them a few feet to the west from where they were originally sitting or kneeling.

§ 87(2)(b) stated that upon their arrival at Washington Square Park, they met an unidentified male friend who told them that protesters had been arrested and brought to a police van in the vicinity of Washington Square West and Washington Square North for graffitiing an NYPD vehicle. § 87(2)(b) and § 87(2)(b) walked towards an NYPD police van parked on Washington Square North and Fifth Avenue to serve as a “witness” to the police activity happening on that street and to make sure that officers were not “wrongfully” arresting protesters. After § 87(2)(b) arrived on Washington Square North, approximately one hundred protesters surrounded the police van. § 87(2)(b) stood between the officers and the protesters to attempt to prevent violence. Approximately five minutes after § 87(2)(b) first arrived in the vicinity of the police van, Police Officer Dones—who had been standing in front of § 87(2)(b)—pushed § 87(2)(b) two or three times with his hands in their abdomen. § 87(2)(b) did not recall Police Officer Dones issuing any verbal warnings before he pushed them. § 87(2)(b)'s hands had been up in the air as Police Officer Dones pushed them. § 87(2)(b) moved back two or three feet as a result of the first push, but then stood firm, so as not to fall backwards onto the protesters behind. After Police Officer Dones pushed § 87(2)(b) one of the protesters told the rest of the protesters to sit down. § 87(2)(b) sat down with the other protesters on Washington Square North and overheard officers tell protesters that they had been trying to move protesters out of the way in order to drive the NYPD van away from the protest area. § 87(2)(b) was not injured during this incident.

§ 87(2)(b) and § 87(2)(b)'s statements were generally consistent with § 87(2)(b)'s statement.

§ 87(2)(b) stated that she did not see the interaction between § 87(2)(b) and Police Officer Dones. However, she observed approximately three or four officers push their way through the “front line” of the crowd of protestors and tell the protesters to “get out of the way.” § 87(2)(b) believed they had been trying to push back the crowd in order to allow the police vehicle to drive away from Washington Square North.

Police Officer Dones and Police Officer Contant's statements were generally consistent with each other, and both stated that they received a call over the police radio during their regular patrol to assist other officers at the Queer Liberation March in Washington Square Park. At the march, Police Officer Dones and Police Officer Contant first responded to the scene of a police van with a prisoner inside which was being surrounded by protesters. After officers “guided” the protesters away from the van with the prisoner inside in order to allow for it to leave the area, Police Officer Dones and Police Officer Contant were told by unknown police officers that there was another police van approximately half a block away containing an injured officer, which protesters were also preventing from leaving. Police Officer Dones and Police Officer Contant went to assist with this second van. They did not recall receiving specific instructions from any supervisor about how to assist with the police van with the injured officer inside. Approximately one hundred protesters

surrounded the van and “berated” and cursed at the officers around the van, including Police Officer Dones and Police Officer Contant. The officers around the van, including Police Officer Dones and Police Officer Contant, tried to clear a path by “guid[ing]” protesters away from the police van with the injured officers inside, by pushing them away, so that it could drive away from Washington Square North. They both noted that in addition to themselves, there were several other officers also attempting to push protestors away from the van. The officers were unable to clear a path for the van in this manner but eventually the protesters dispersed, and they were able to escort the van away.

Police Officer Contant’s relevant BWC video (2nd video attached to IA # 35, titled AXON_Body_2_Video_2020-06-28_1624 (PO CONTANT).mp4) (**Board Review 02**), provides the best overview of the context of the incident. It begins as he and Police Officer Dones and a group of other officers walk down the middle of the street from the location of the first van to the location of the second police van. As they approach the location of what turns out to be the second police van, the street appears to be blocked by a line of protesters. Some of the officers, including Police Officer Dones and Police Officer Contant, push some of the protestors, creating a gap through the line of protesters through which they walk to get to the second police van. 50 seconds into the video, as they reach police van #8791 of the 75th Precinct, protesters are seen surrounding the sides and front of the van, with the closest protesters appearing to be standing inches away from the van. Police Officer Dones and Police Officer Contant push away some of the protesters standing on the left side of the van and walk towards the front of the van along the left side.

Upon reaching the front of the van approximately 55 seconds into the video, Police Officer Dones, who is in front of Police Officer Contant, motions towards the protesters closest to the front of the van to move back. The protesters remain standing in front of the van, with the closest protester appearing to be less than a foot from the front of the van or pressed against the front of the van, and chant, with some holding signs, some holding their arms in the air, and some reaching towards Police Officer Dones, seemingly to take photos of his shield. Police Officer Dones remains standing adjacent to the van, with his back to the front driver-side wheel of the van and facing the protesters, who are standing approximately a foot or two in front of him. Beginning at approximately 2 minutes and 15 seconds into the video, several officers walk past Police Officers Dones and Contant, and enter into the space between the protesters and the front of the van. Police Officer Dones and some of these other officers push the front row of protesters back, and motion for the van to drive forward, and Police Officer Dones is heard saying, “little by little.” It is unclear whether the van actually moves since Police Officer Contant turns to face the protesters and Police Officer Dones as this occurs. At this point § 87(2)(b) is directly in front of Police Officer Dones. As this happens, the front line of protesters continues to be held and pushed back by Police Officer Dones and some of the other officers to his right, and a gap appears to open up amongst the protesters through which some of these officers begin to walk through. Between 3 minutes 15 seconds and 3 minutes 30 seconds into the video, Police Officer Dones is seen pushing § 87(2)(b) and the 3 or 4 other protesters directly in front of him beside § 87(2)(b) § 87(2)(b) and these protesters move back a few feet but none of them appear to fall as a result of the push. Beginning at approximately 3 minutes and 25 seconds into the video, a protester begins calling for the rest of the protesters to “get down” and all of the protesters in front of the van, including § 87(2)(b) are seen sitting and kneeling on the ground. At 3 minutes and 33 seconds into the video, Police Officer Contant taps Police Officer Dones on the shoulder and says “Enough.” At 3 minutes and 35 seconds, Police Officer Dones appears to attempt to lift one of the protesters who is kneeling or sitting on the ground by grabbing them underneath both armpits while taking steps to the left and then releasing them approximately 5 to 10 seconds later. As this happens, Police Officer Contant taps Police Officer Dones on the shoulder and says, “Dones, stop it.” Police Officer Dones then walks away from the protesters and stands beside the van.

Police Officer Dones' relevant BWC video (2nd video attached to IA # 20, titled AXON_Body_2_Video_2020-06-28_1626.mp4) (**Board Review 01**), begins when he is already facing the protesters as he stands in front of the police van with the injured officers inside. Beginning at 1 minute and 15 seconds into the video, Police Officer Dones repeatedly tells the protesters in front of him to "move to the side." At 1 minute and 32 seconds into the video, Police Officer Dones tells the protester in front of him that there are "two injured cops" in the police van, and says, "Please go." At 2 minutes and 5 seconds into the video, Police Officer Dones tells the protesters in front of him, "Move, please, move," while pushing § 87(2)(b) —in their waist and hip area with his extended gloved hand. The entirety of Police Officer Dones' physical contact with § 87(2)(b) lasts approximately seven seconds. The interaction between Police Officer Dones and the protester whom he appears to attempt to lift from the ground in Police Officer Contant's video is not captured in Police Officer Dones' video because it occurs below the sight line of his chest-mounted BWC. However, during the period in time when Police Officer Contant's BWC shows Police Officer Dones attempting to lift the unidentified protester, in Police Officer Dones' BWC, starting at runtime 2 minutes and 15 seconds, Police Officer Dones is heard saying, "Move, please, move, move. We've got injured cops. Please sit here. Sit here. Move. We've got injured cops here."

Around the time that Police Officers Dones and Contant are in the front of van #8791, Lieutenant Giersbach's BWC (15th video attached to IA#59, titled AXON_Body_2_Video_2020-06-28_1616.mp4) (**Board Review 05**) captures the right side of police van #8791, and shows a female FDNY EMT holding what appears to be a syringe going in and out of the open police van. Sergeant Houlahan's BWC (**Board Review 05**) (17th video attached to IA#59, titled AXON_Body_2_Video_2020-06-28_1616.mp4) (**Board Review 05**) shows a male EMT standing at the back of van #8791 throughout the incident. Both Lieutenant Giersbach and Sergeant Houlahan's videos also show officers repeatedly telling protesters that there are injured officers who need medical attention in the van and capture various officers pushing protesters as they move through the crowd.

Police Officer Dones testified that he pushed protesters, who were standing within an arm's length, because he was trying to "guide" them away from the police van. Police Officer Dones stated that no specific protestor had stood out to him when he had extended his arms out and he did not recall which parts of the protesters' bodies he had made physical contact with. Police Officer Dones stated that he had verbally told the protesters to "get back," and that he had then "push[ed] forward" by extending his two arms in order to "keep a distance" and a "zone of safety" between the approximately one hundred protesters, himself, and the police van. Police Officer Dones also noted that since he was carrying weapons on his belt he did not want the protesters to be too close to him.

Police Officer Dones stated that after the protesters sat down, he lifted the unidentified individual because they happened to be in front of him and he was still trying to get protesters out of the way of the police van so that it could leave the scene and get the injured officers assistance. He placed the individual back down when he realized that there was "no point" in doing so because there were too many protesters sitting down in order to move them out of the way.

Police Officer Contant stated that he extended his arm toward Police Officer Dones and told him "enough" and "stop it" because it was "useless" and a "waste of effort" to try to move the protesters away from the van once they sat on the ground.

NYPD Patrol Guide procedure 221-01 states that "officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is

reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. All members of the service at a police incident must use reasonable force, employ less lethal alternatives, and prioritize e-escalation, whenever possible.”

In determining whether the use of force is reasonable, members of service should consider the following:

- A. The nature and severity of the crime or circumstances
- B. Actions taken by the subject
- C. The duration of the action
- D. The immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders
- E. Whether the subject is actively resisting custody
- F. Whether the subject is attempting to evade arrest by flight
- G. Number of subjects in comparison to the number of MOS
- H. Size, age, and condition of the subject in comparison to the MOS
- I. Subject’s violent history, if known
- J. Presence of a hostile crowd or agitators
- K. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence” (**Board Review #13**).
- L.

NYPD Patrol Guide procedure 221-02 states, “When a member of the service must gain compliance, control, or custody of an uncooperative subject” officers must “apply no more than the reasonable force necessary to gain control” and must “assess the situation continually and adjust the use of force as necessary” (**Board Review #13**).

NY Penal Law Section 195.05 states that a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function (**Board Review #14**).

Prior to arriving at marked police van #8791, officers informed Police Officer Dones and Police Officer Contant that there were injured officers in the van. When they arrived at police van #8791, it was encircled in the middle of the street by what appears on BWC to be a crowd of hundreds of protesters standing inches away from the police van. § 87(2)(g)

§ 87(2)(g) The BWC footage shows that prior to making any physical contact with the protesters within his immediate vicinity, Police Officer Dones issued repeated verbal commands to the protesters in his vicinity to “move” and he communicated to them throughout their interactions that there were injured officers inside the police van. Despite Police Officer Dones’ repeated verbal warnings, § 87(2)(b) and the other protesters in front of the van continued to surround the officers and the van and prevented the police van from moving. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**Board Review #15**).
- Police Officer Jonathan Dones has been a member of service for 11 years and has been a subject in 7 CCRB complaints and 13 allegations, none of which were substantiated. Police § 87(2)(g)

Mediation, Civil and Criminal Histories

- As per agency policy, this case was not suitable for mediation due to it being protest related.
- According to the New York City Office of the Comptroller, no Notice of Claim had been filed regarding this incident as of September 23rd, 2020 (**Board Review #16**).
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (**Board Review #17**).

Squad No.: 2

Investigator: Julia Pagnamenta Inv. Julia Pagnamenta 10/08/2020
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 10/8/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date